IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.2133 and 2945 of 2003
W.A.M.P.No.3004 and 4655 of 2003

M.S. Munivenkatappa ... Appellant in W.A.2133/2003
& Respondent in W.A.2945/2003

Vs.

1. State Bank of India,
rep.by its Chief General Manager,
Local Head Office,
21, Rajaji Salai,
Chennai - 600 001.

2. The Deputy General Manager,
State Bank of India,
Zonal Office, Kurinchi Complex,
Dr.Nanchappa Road,
Coimbatore.

3. Branch Manager,
State Bank of India,
Hosur ADB,
Dharmapuri District... Respondents in W.A.2133/2003
& Appellants in W.A.2945/2003

These Writ Appeals have been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.1464 of 2001 dated 28.3.2003.

For Appellant in W.A.2133/2003: Mr.N.G.R.Prasad for
& Respondents in W.A.2945/2003 M/s.Row & Reddy

For Respondents in WA.2133/2003: Mr.S.Kanniah
& Appellants in WA.2945/2003

COMMON JUDGMENT

N. PAUL VASANTHAKUMAR, J.

These writ appeals are directed against the order of the learned single Judge made in W.P.No.1464 of 2001 dated 28.3.2003. W.A.No.2133 of 2003 is filed by the employee challenging the order denying backwages and also directing him to return the terminal benefits received, with 8.5% interest per annum. The Management of the State Bank of India, filed W.A.No.2945 of 2003 against the order of the learned single Judge in toto.

2. For the sake of convenience, in this judgment, the parties will be referred according to their ranks in the writ petition.

3. The brief facts necessary for disposal of the writ appeals are as follows.

(i) Petitioner was temporarily appointed as Watchman in the respondent Bank on 1.11.1966 at Bangalore main branch and he was made permanent part-time sub-staff on 4.9.1974 and posted at Jaya Nagar Second Block Branch. Petitioner was made as full-time Messenger on 1.6.1980 and on 12.8.1993 he was appointed as Duftry at Bangalore Local Head Office and was posted as Messenger on 11.1.1996 at Kamanthotty branch at Dharmapuri. While the impugned order in the writ petition was passed, the petitioner was serving in the Tamil Nadu Region.

(ii) The case of the petitioner is that he rendered

continuous service as stated above and by letter dated 21.7.1999 and 1.9.1999 he requested the Bank to permit him to go on voluntary retirement. The third respondent sent a letter to the first respondent on 16.7.1999 and stated that the petitioner had completed 25 years of service and is having pensionable service of 20 years. However, the petitioner received a letter from the third respondent dated 16.8.1999 stating that the petitioner can opt for voluntary retirement scheme only after completion of the pensionable service, and as the petitioner has not completed the required year of service, his request for voluntary retirement will be treated as resignation from service with effect from 30.9.1999.

(iii) On 27.9.1999 the petitioner sent a reply and stated that he is willing to go only on voluntary retirement and his request cannot be treated as resignation. However, by order dated 30.9.1999, the respondents confirmed the original order dated 16.8.1999 and treated the petitioner's request for voluntary retirement as one of resignation.

(iv) Aggrieved by the said communication dated 16.8.1999 and 13.9.1999, petitioner has filed W.P.No.1464 of 2001 on the ground that the petitioner's request was only to permit him to go on voluntary retirement and the same cannot be treated as resignation unilaterally by the respondents and by doing so, the respondents are depriving the petitioner from receiving pension.

(v) It is also explained in the affidavit that he has chosen to challenge the said orders in January, 2001 as he was having no means to prosecute the matter immediately and therefore he has prayed for condoning the delay in filing the writ petition.

3. The respondents filed counter affidavit wherein it is stated that the writ petition is liable to be dismissed on the ground of delay and laches. According to the respondents, petitioner was given permanent employment only from 1.6.1981 and hence he is not eligible for pension and other service benefits prior to the said date. Apart from that, the petitioner absented for about 714 days, out of which 217 days was without any sanction of leave and the said period will not be counted for total service and therefore the petitioner's period of pensionable service is less than 20 years. It is the case of the respondents that on 21.7.1999 petitioner submitted application to quit his services from 30.9.1999 stating that he has put in more than 25 years of service and prayed for considering his request for voluntary retirement. The third respondent, after scrutiny of the application, sent a communication on 16.8.1999 stating that the petitioner is not entitled to go on voluntary retirement and the Bank will process the application treating the same as resignation from service and not as voluntary retirement since he was not having the

required pensionable service of 20 years, which was acknowledged by the petitioner on 19.8.1999. According to the respondents, the petitioner did not choose to give any reply for the notice dated 16.8.1999 immediately and therefore the petitioner was informed on 27.9.1999 that his request for resignation was accepted by the appropriate authority and that he will be relieved from the Bank's service at the close of the business hours on 30.9.1999.

4. It is also stated that since the petitioner is not eligible to go on voluntary retirement, his request was treated as resignation and was relieved from service on 30.9.1999. It is further stated that the petitioner, after being relieved, accepted all the monetary benefits from the Bank and therefore requested this Court to dismiss the writ petition.

5. The learned single Judge by order dated 28.3.2003 upheld the contention of the petitioner and held that the respondents were not justified in treating the petitioner's request for voluntary retirement as one of resignation and it is also held that the respondents should have either accepted or rejected the application and it has no jurisdiction to treat the application as one of resignation. While accepting the contention of the petitioner, the learned single Judge directed the respondents to reinstate

the petitioner with all service benefits, but without backwages from the date of the impugned order till the petitioner is reinstated in service with a further direction to the petitioner to refund the entire terminal benefits received, with interest at the rate of 8.5% per annum within a period of three months from the date of receipt of the order.

6. The learned counsel for the petitioner challenging the portion of the order rejecting denial of backwages and giving direction to refund the terminal benefits with interest at 8.5% contended that once the impugned order is found unsustainable, the petitioner having been prevented from performing his duties, is entitled to get backwages apart from the relief of reinstatement and continuity of service. The learned counsel further submitted that the petitioner was ready and willing to serve in the Bank and he was not employed anywhere during the period in which he was not in the service of the Bank and therefore the petitioner is entitled to be given backwages. The learned counsel further argued that there is no justification to order refund of the terminal benefits received by the petitioner with 8.5% interest per annum since even if backwages is ordered to be paid, interest for the backwages will not be granted. The learned counsel also argued that the Provident Fund amount was received by the petitioner without prejudice to his rights to claim reinstatement and also received the

amount on condition that if he is reinstated he will settle the amount received from the backwages.

7. The learned counsel for the respondents submitted that the order of the learned single Judge in allowing the writ petition without backwages is unsustainable in view of the fact that the petitioner is not entitled to maintain the writ petition and the remedy open to him is only to go before the Special Tribunal to adjudicate the matter in issue. The learned counsel further argued that the petitioner having received the terminal benefits, is not entitled to challenge the impugned order after accepting the resignation and relieving the petitioner from 30.9.1999 under the principle of waiver. It was further argued that the writ petitioner is not entitled to maintain the writ petition as he is guilty of laches.

8. We have considered the rival submissions made by the learned counsel for the petitioner as well as the respondents in the light of the judgment of the learned single Judge. It is not in dispute that the application submitted by the petitioner is only for permitting him to go on voluntary retirement. The respondents also correctly understood the contents in the application and sent a communication on 16.8.1999 specifically stating that the petitioner has put in only 16 years and three months of service in the Bank and hence he is not eligible for pension and that the petitioner can opt for voluntary retirement

only after 20 years of pensionable service. After saying so, the respondents unilaterally stated that the petitioner's application will be treated/processed as resignation from service.

9. Further on 27.9.1999 the Branch Manager informed the petitioner that the resignation request of the petitioner was approved by the appropriate authority and the petitioner will be relieved from the bank as on the close of business on 30.9.1999. On the same day, petitioner sent a reply to the Branch Manager and stated that he has given letter seeking only voluntary retirement and treating the same as resignation by the Bank is improper and requested to reconsider the decision and treat his letter only for voluntary retirement. Without reconsidering the said request, the unilateral decision already taken was confirmed and the petitioner was relieved from his duties on 30.9.1999 and a reply was also given to the petitioner on 30.9.1999 stating that the petitioner's request for reconsideration dated 22.9.1999 cannot be reviewed. The petitioner has been paid the earned leave salary and other benefits by the Bank and treated him as resigned from the services of the Bank.

10. The petitioner, by representation dated 27.11.1999 sent by RPAD, stated that due to the action of the respondents the petitioner is totally upset and it is a great financial loss to him and due to the said action one

of the petitioner's child out of four children discontinued education; that his two children are studying in the final year degree course and school final year respectively; and that, he is suffering a lot due to the death of his wife. Hence the petitioner requested the Branch Manager to reinstate him in service, for which the Assistant General Manager gave a reply on 1.12.1999 and stated that there is no provision to consider reinstatement of the resigned employee of the Bank, as per the Rules of the Bank. Taking note of the above correspondence and having regard to the fact that the petitioner was under financial and monetary strain and the delay is minimal, we are of the view that the delay is properly explained and the writ petition cannot be dismissed as contended by the learned counsel for the respondents.

11. As per the communication of the respondents, petitioner has applied only for voluntary retirement. It is for the respondents to accept or reject the said request and communicate the decision to the petitioner. Instead of doing so, respondents have chosen to treat the said application as that of resignation in spite of petitioner raising objection and the said objection was rejected by stating that already the appropriate authority has approved the resignation. When there is no request from the petitioner to treat his voluntary retirement application to that of resignation, the respondents have no jurisdiction to

treat his application as one of resignation and proceed further. Even though the appropriate authority has unilaterally decided, before relieving the petitioner on 30.9.1999, the petitioner requested not to treat the application as one of resignation and review the decision. Hence it is clear that before relieving the petitioner on 30.9.1999, he has objected the unilateral decision of the respondents and not accepted for resignation. As it is found that the respondents have unilaterally treated the application of the petitioner for voluntary retirement to that of resignation, the said action of the respondents is not valid in the eye of law. Once it is found that the action of the respondents is illegal, it has to be held that the respondents have illegally prevented the petitioner from discharging his duties from 1.10.1999 and if the respondent's illegally prevented the petitioner from attending to the duties, respondents are bound to pay salary for the period for which the petitioner was not allowed to perform his duties.

12. (a) The Honourable Supreme Court in the decision reported in (2005) 8 SCC 314 (Srikantha S.M. v. Bharath Earth Movers Ltd.), considered the unjust denial on the part of the employer to assign work and held that the employee is entitled to get salary and other benefits and the principle of 'No work, No pay' cannot be applied in such cases. In paragraphs 28 to 30, the Honourable Supreme Court held as

follows,

"28. The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15-1-1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of no work, no pay would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava ((1998) 9 SCC 559) and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha II ((2002) 3 SCC 437) also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to full salary and allowances of the entire period he was kept out of service. In Balram Gupta (1987 Supp SCC 228) in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.

30. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4-1-1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the Division Bench upholding the action of the Company are also set aside. The respondent Company is directed to treat the appellant in continuous service up to the age of superannuation i.e. 31-12-1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15.1.1993 or thereafter. The appeal is accordingly allowed with costs."

(b) In the decision reported in (2002) 3 SCC 437

(Shambhu Murari Sinha v. Project & Development India Ltd.)

the Honourable Supreme Court considered as to whether

voluntary retirement offer could be withdrawn and even after

the withdrawal of voluntary retirement request, if a person

is relieved, whether he is entitled to rejoin duty and shall

be paid all his salary and other benefits during the period

he was out from the service and if a person reached the age

of superannuation he shall be paid full salary and

allowances for the entire period he was out of service till

the date of his superannuation and thereafter he shall be

entitled to get all retiral benefits counting the above

period as if he was in service.

13. The stand taken by the respondents that the

petitioner is not qualified to go on voluntary retirement as

he has not completed 20 years of service and therefore the Bank treated his request as one of resignation, cannot be accepted as the petitioner has not given any letter of resignation nor consent to treat his voluntary retirement request to that of resignation, at any point of time. The Honourable Supreme Court in the decision reported in (2003) 1 SCC 701 (Prabha Atri (Dr) v. State of U.P.) at para 10 considered resignation in the following manner,

> "10. .... To constitute a resignation, it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer ((1984) 2 SCC 141) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. ....."

Hence we are of the view that the petitioner is entitled to get salary and other benefits from 1.10.1999 till the date of his reinstatement with continuity of service as the petitioner was unilaterally prevented from attending to his lawful duties by virtue of an illegal order of relieving the petitioner as if he has resigned. It is not the case of the respondents that the petitioner was gainfully employed at any time after 1.10.1999. The same is not pleaded by the respondents either in the counter affidavit or in the grounds raised in the writ appeal and not even pleaded at the time of arguments. Hence, the decision of the learned

single Judge denying backwages to the petitioner stands set aside.

14. Insofar as the further direction given by the learned single Judge that the petitioner is liable to refund the terminal benefits received with 8.5% interest is concerned, as rightly contended by the learned counsel for the petitioner, he is denied of employment from 1.9.1999 and even though in the previous paragraph we have ordered to pay salary from 1.10.1999 till the date of reinstatement, we have not ordered to pay interest for the arrears of salary by the respondents. Hence the respondents are not entitled to claim any interest for the amount already paid while adjusting the backwages payable to the petitioner. The said direction issued by the learned single Judge is set aside.

15. The learned counsel for the respondents in their writ appeals contended that the petitioner has accepted the terminal benefits and therefore he is not entitled to challenge the impugned order. It is relevant to note that as early as on 27.11.1999, petitioner prayed for reinstatement and the petitioner's request for reinstatement was rejected by the respondent on 1.12.1999. Petitioner, as stated in the previous paragraphs, was in need of finance as he lost his wife and one of his child discontinued education and he was in need of money for payment of fees to his two children, who were studying final year degree course and school final year. Further the petitioner had received

provident fund amount only under protest, that is, reserving his right to challenge the order of the respondents.

16. The right of the petitioner to continue in service if his request for voluntary retirement is not acceptable and earn his salary for his livelihood is a fundamental right guaranteed under Article 21 of the Constitution of India. Once the said proposition is accepted, that is, an employee is entitled to continue in service and earn his livelihood till he is superannuated it can be safely concluded that acceptance of some benefits without protest and acceptance of some benefits under protest will not make any difference as it is repeatedly held that there is no waiver of fundamental right.

(i) In the decision reported in (2000) 3 SCC 588 (Nar Singh Pal v. Union of India), the Honourable Supreme Court considered whether there can be waiver of fundamental right or not and in para 13 held thus,

"13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. This, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the temporary status after having put in ten years of service. Like any other employee, he had to sustain himself, or, maybe, his

family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs 6350, was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained."

(ii) The Honourable Supreme Court considered the

question of waiver of rights in the decision reported in

(2005) 12 SCC 747 (Punjab & Sind Bank v. Mohinder Pal Singh)

and in para 10 held thus,

"10. Waiver of a right implies his knowledge of the existing right. A person cannot be said to have waived his right unless it is established that his conduct was such so as to enable the Court to arrive at a conclusion that he did so with knowledge that he had a right, but despite the same acted in such a manner which would imply that he has waived the same."

(iii) One of us (N.Paul Vasanthakumar, J.), considered

similar plea of waiver in W.P.No.4421 of 2006

(N.S.balasubramanian & Others v. Food Corporation of India &

Others) and by order dated 17.4.2006, rejected similar plea

following the decisions of the Honourable Supreme Court

reported in AIR 1986 SC 180 (Olga Tellis v. Bombay Municipal Corporation); AIR 1959 SC 149 (Basheshwar Nath v. Commissioner of Income-Tax, Delhi); and (2000) 3 SCC 855 (Nar Singh Pal v. Union of India and others). Appeal filed against the said order in W.A.No.956 of 2006 (Food Corporation of India & Others v. N.S.Balasubramanian & Others) was dismissed with costs by the First Bench of this Court on 30.10.2006.

17. Hence, we are of the view that the point urged by the learned counsel for the respondents with regard to the waiver of petitioner's right is unsustainable.

18. The next contention urged by the learned counsel for the respondents that the petitioner has approached this Court belatedly and therefore the writ petition is liable to be dismissed on the ground of laches is answered by the learned counsel for the petitioner by stating that the petitioner is a last grade servant in the Bank and that he was agitating the matter before the respondents and the respondents rejected the request for reconsideration only on 1.12.1999 and that the petitioner was prevented from approaching this Court due to financial strain and filed writ petition in January, 2000, and therefore there is no delay, much less unreasonable delay in filing the writ petition. The learned counsel also cited a judgment of the Honourable Supreme Court reported in (2003) 1 SCC 184 (S.K.Mastan Bee v. General Manager, South Central Railways)

and in para 6 the Honourable Supreme Court held that denial

of family pension to the widow of the Railway Gangman is in

violation of Article 21 of Constitution of India. The

Honourable Supreme Court further held thus,

"... it was an obligation of the
Railways to have computed the family
pension and offered the same to the
widow of its employee as soon as it
became due to her and also in view of
the fact that her husband was only a
Gangman in the Railways who might not
have left behind sufficient resources
for the appellant to agitate her rights
and also in view of the fact that the
appellant is an illiterate, the learned
Single Judge, in our opinion, was
justified in granting the relief to the
appellant from the date from which it
became due to her, that is the date of
the death of her husband. Consequently,
we are of the considered opinion that
the Division Bench fell in error in
restricting that period to a date
subsequent to 1.4.1992."

19. Hence we are of the view that the respondents are

not justified in contending that the petitioner has

approached this Court belatedly and the writ petition is to

be dismissed on the ground of laches.

20. The learned counsel for the respondents finally

submitted that the petitioner if at all aggrieved, can only

raise an industrial dispute and not entitled to invoke the

jurisdiction of this Court under Article 226 of constitution

of India.

21. We have considered the said submission in the

light of the facts of this case. It is an admitted fact that the petitioner has applied only for voluntary retirement and the said request was considered by the respondent as one of resignation unilaterally. The suggestion made by the respondents that his request could be treated as resignation was not accepted by the petitioner at any point of time. Hence there is no dispute with regard to the facts of this case. Further the writ petition was admitted by the learned single Judge in January, 2000 and the writ petition was partly allowed in favour of the petitioner and as against the denial of his backwages, petitioner has filed this writ appeal. This issue was considered by the Honourable Supreme Court in the following decisions.

(a) In AIR 1965 SC 1321 (Khurai Municipality v.Kamal Kumar) in para 7, the Honourable Supreme Court held thus,

"7. Before us it is contended by Mr.Setalvad on behalf of the Council that an appeal had already been preferred by the respondents against the assessment list and, therefore, they were not entitled to any relief under Art.226 of the Constitution. It is true that the High Court would not ordinarily entertain a petition under Art.226 of the Constitution where an alternative remedy is open to the aggrieved party. Though that is so the High Court has jurisdiction to grant relief to such a party if it thinks proper to do so in the circumstances of the case. In the present case the High Court has chosen to exercise discretion in favour of the respondents and it would not be right for us to interfere with the exercise of

that discretion unless we are satisfied that the action of the High Court was arbitrary or unreasonable. Nothing has been brought to our notice from which it could be inferred that the High Court acted arbitrarily in granting the writ prayed for to the respondents."

(b) In the decision reported in AIR 2003 SC 2120 =

(2003) 2 SCC 107, (Harbanslal Sahnia v. Indian Oil

Corporation Ltd.), in para 7 the Honourable Supreme Court

held as follows,

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 11). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

(c) Similar issue was considered by the Honourable

Supreme Court in the decision reported in (2006) 2 SCC 269

(L.K.Verma v. HMT Ltd.) and in para 21, the Honourable

Supreme Court held thus,

"21. In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy. (See Kanak v. U.P. Avas Evam Vikas Parishad ((2003) 7 SCC 693)). We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the respondent."

(d) Recently in the decision reported in 2006 (9)

Scale 390 (Star Paper Mills v. State of U.P.), the

Honourable Supreme Court considered this issue and in

paragraphs 5 to 8 held thus,

"5. The issues relating to entertaining writ petitions when alternative remedy is available, were examined by this Court in several cases and recently in State of Himachal Pradesh and Ors. v. Gujarat Ambuja Cement Ltd. and Anr. 2005 (6) SCC 499.
6. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy

has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.

7. Constitution Benches of this Court in K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors. (AIR 1954 SC 207); Sangram Singh v. Election Tribunal, Kotah and Ors. (AIR 1955 SC 425); Union of India v. T.R. Varma (AIR 1957 SC 882); State of U.P. and Ors. v. Mohammad Nooh (AIR 1958 SC 86); and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras (AIR 1966 SC 1089), held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

8. Another Constitution Bench of this Court in State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. etc. (AIR 1964 SC 1006) held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been re-iterated in N.T. Veluswami Thevar v. G. Raja Nainar and Ors. (AIR 1959 SC 422);

Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr. (AIR 1965 SC 1321; Siliguri Municipality and Ors. v. Amalendu Das and Ors. (AIR 1984 SC 653); S.T. Muthusami v. K. Natarajan and Ors. (AIR 1988 SC 616); R.S.R.T.C. and Anr. v. Krishna Kant and Ors. (AIR 1995 SC 1715); Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors. (AIR 2000 SC 2573); A. Venkatasubbiah Naidu v. S. Chellappan and Ors. (2000 (7) SCC 695); and L.L. Sudhakar Reddy and Ors. v. State of Andhra Pradesh and Ors. (2001 (6) SCC 634); Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors. (2001 (8) SCC 509); Pratap Singh and Anr. v. State of Haryana (2002 (7) SCC 484) and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors. (2003 (1) SCC 72)."

22. In the light of the above decisions, we are of the view, at this stage, petitioner cannot be directed to go before the Labour Court to vindicate his grievance particularly when the facts are not in dispute. It is well settled in law that availability of alternate remedy is not always a bar to entertain a writ petition and it is the discretionary jurisdiction given to the High Court under Article 226 of Constitution of India even to admit a writ petition where alternate remedy is also provided. Hence the contention of the learned counsel for the respondents made on this ground is also rejected.

23. In view of our above referred findings, we pass the following order,

"The impugned order of the

respondents relieving the petitioner
from 30.9.1999 treating him as resigned,
is set aside with a direction to the
respondents to reinstate the petitioner
with backwages, continuity of service
and all other service benefits from
1.10.1999, within a period of four weeks
from the date of receipt of copy of this
order. The terminal benefits received
by the petitioner is directed to be
adjusted from the backwages to be
payable to the petitioner from 1.10.1999
and the balance, if any, shall be paid
to the petitioner within a period of six
weeks from the date of receipt of copy
of this order. If any amount is still
payable by the petitioner, he shall pay
the same without any interest."
In view of our above conclusions, we allow W.A.No.2133 of

2003 and dismiss W.A.No.2945 of 2004. No costs.

vr/

To

1. The Chief General Manager, State Bank of India,
Local Head Office, 21, Rajaji Salai,
Chennai - 600 001.

2. The Deputy General Manager,
State Bank of India, Zonal Office, Kurinchi Complex,
Dr.Nanchappa Road, Coimbatore.

3. The Branch Manager, State Bank of India,
Hosur ADB, Dharmapuri District